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JACK SHREVE  
PUBLIC COUNSEL

**STATE OF FLORIDA**  
**OFFICE OF THE PUBLIC COUNSEL**

c/o The Florida Legislature  
111 West Madison St.  
Room 812  
Tallahassee, Florida 32399-1400  
850-488-9330

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October 30, 1997

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, DC 20554

Re: In The Matter Of Federal-State Joint Board on  
Universal Service

CC Docket No. 96-45

Dear Sir:

Enclosed please find an original and five copies of Comments by the Citizens of Florida on the Florida Public Service Commission's Petition for Declaratory Statement, Waiver and Clarification.

Sincerely yours,

*Charles J. Beck*  
Charles J. Beck  
Deputy Public Counsel

Enclosure

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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OCT 31 1997

FCC MAIL ROOM

In the Matter of )  
 ) CC Docket No. 96-45  
Federal-State Joint Board on )  
Universal Service )

**COMMENTS BY THE CITIZENS OF FLORIDA ON THE  
FLORIDA PUBLIC SERVICE COMMISSION'S PETITION FOR  
DECLARATORY STATEMENT, WAIVER AND CLARIFICATION**

The Citizens of the State of Florida, through Jack Shreve, Public Counsel, file these comments on the Petition for Declaratory Statement, Waiver and Clarification filed by the Florida Public Service Commission on October 19, 1997. In support of these comments, the Citizens of Florida submit the following:

1. Section 350.0611, Florida Statutes (1995) authorizes the Public Counsel to appear in the name of the state of Florida or its citizens in any proceeding or action before the Florida Public Service Commission and to urge therein any position which the Public Counsel deems to be in the public interest. In addition, the statute authorizes the Public Counsel to appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the Florida Public Service Commission and to appear in the name of the state of Florida or its citizens.

2. On October 19, 1997, the Florida Public Service Commission filed a petition for a declaratory statement, waiver and clarification in connection with the Commission's Order on Universal Service, CC docket no. 96-45, released May 8, 1997. In that petition the Florida Public Service Commission stated that it was not clear to it that Florida's Lifeline Assistance Program will qualify for federal matching under Florida's Lifeline Assistance Plan. *Petition* at page 3. Specifically, the Florida Public Service Commission asked this Commission to issue a declaratory statement deciding whether Florida's Lifeline Assistance Plan qualifies for matching. *Petition* at pages 3-4. The Citizens of Florida urge the Commission to find that Florida's Lifeline Assistance Program does qualify for federal matching.

### **FLORIDA'S STATUTORY FRAMEWORK FOR LIFELINE**

3. In 1995 the Florida legislature revamped the regulation of telecommunications companies in Florida. Excerpts from the statutes are attached to these comments as Attachment 1. The Florida legislature found that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and would provide customers with freedom of choice, encourage the introduction of new telecommunications services, encourage technological innovation, and encourage investment in the telecommunications infrastructure. Section 364.01(3), Florida Statutes (1995). It also

found that the Florida Public Service Commission should exercise its jurisdiction in order to protect the public health, safety, and welfare by insuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices. Section 364.01(4)(a), Florida Statutes (1995).

4. For the largest local telecommunications companies, the statutes substituted price regulation for rate of return regulation. Local exchange telecommunications companies with 100,000 or more access lines in service as of July 1, 1995 were permitted to file a notice of election to be under price regulation effective January 1, 1996, or when an alternative local exchange telecommunications company provided local exchange telecommunications service in its territory, whichever was later. Smaller local exchange telecommunications companies were allowed to elect whether to come under price regulation. Section 364.051, Florida Statutes (1995). Since that time, all of the larger local exchange telecommunications companies, as well as a significant number of the smaller local telecommunications companies, have come under price regulation in Florida. Lifeline rates for these companies has no effect on the other rates charged by the companies.

5. Section 364.10, Florida Statutes (1995) prohibits any telecommunications company from giving any undue or unreasonable preference or advantage to any person or locality. However, notwithstanding this prohibition, the statute specifically requires any telecommunications company serving as a carrier of last resort to provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in a Florida

Public Service Commission approved tariff. Presently, the incumbent local exchange companies are the carriers of last resort in Florida, but the statute provides a mechanism for other carriers to become carriers of last resort. After January 1, 2000, any alternative local exchange telecommunications company may petition the Florida Public Service Commission to become the universal service provider and carrier of last resort in areas requested to be served by that alternative local exchange telecommunications company. Section 364.025(5), Florida Statutes (1995). Any telecommunications company serving as carrier of last resort would be required to offer Lifeline rates under Section 364.10(2), Florida Statutes (1995).

6. The 1995 amendments to the Florida statutes governing the regulation of telecommunications companies provides a pro-competitive framework for the regulation of local telecommunications companies. Carriers of last resort, whether the current incumbent local exchange telecommunications company or an alternative local exchange telecommunications company after January 1, 2000, will be required to provide Lifeline rates. Under price regulation, the provision of Lifeline rates will not affect the rates paid by other subscribers -- something that may or not be so with the lifeline programs in some other states. These statutes provide minimum requirements of Lifeline service that must be provided by local telecommunications companies in Florida.

**THE COMMISSION'S REPORT AND ORDER  
ON UNIVERSAL SERVICE**

7. The Citizens of Florida applaud the actions taken by the Commission to expand and increase the amount of federal Lifeline support available to the states. We strongly support the Commission's finding at paragraph 353 that

"We conclude that our approach accomplishes the joint board's goal of increasing subscribership and maximizing matching incentives. We conclude that providing Lifeline support in all states, irrespective of state participation, will help increase subscribership in those states that presently do not participate in the Lifeline program. At the same time, we conclude that our additional support offers states an incentive to generate intrastate support to receive the additional \$1.75 (over \$5.25) in federal support and thus will increase support in many states. We have no reason to conclude that states will not participate in the modified Lifeline program."

At footnote 891, the Commission found that under its new plan, low income consumers will receive the full \$10.50 in support if their state provides \$3.50 in intrastate support, as now occurs in 44 jurisdictions. Florida continues to provide \$3.50 in intrastate support.

8. The Citizens of Florida find nothing in the Commission's Report and Order that would disqualify existing state Lifeline programs from federal matching funding. In fact, the Commission specifically addressed a concern raised by the Florida Public Service Commission and noted that the Commission would not prescribe the

methods states use to generate intrastate lifeline support. Specifically, paragraph 361 of the Report and Order states

"The Joint Board observed that many states currently generate their matching funds through the state rate-regulation process. These states allow incumbent LECs to recover the revenue the carriers lose from charging Lifeline customers less by charging other subscribers more. The Florida PSC points out that this method of generating Lifeline support from the intra state jurisdiction could result in some carriers (i.e., ILECs) bearing an unreasonable share of the programs' cost. We see no reason at this time to intrude in the first instance on states' decisions about how to generate intrastate support for Lifeline. We do not currently prescribe the methods states must use to generate intrastate Lifeline support, nor does this order contain any such prescriptions."

9. In Florida, there has been no instance where the provision of Lifeline rates has increased the rates paid by other customers. Under price regulation in Florida, the provision of Lifeline rates can have no effect on the rates paid by other customers. In addition, for the very few, small local exchange telecommunications companies still under rate of return regulation, no company has filed a rate increase seeking to raise the rates paid by its general body of customers. As explained previously in these comments, the Lifeline program is required by Florida statutes for all carriers of last resort, whether that carrier is an incumbent local exchange telecommunications companies or, in the future, an alternative local exchange telecommunications company.

**THE FLORIDA PUBLIC SERVICE COMMISSION'S  
ORDER ON LIFELINE**

10. On October 14, 1997, the Florida Public Service Commission issued an order entitled "Notice of Proposed Agency Action Designating Eligible Telecommunications Carriers and Approving Changes to Lifeline Assistance Plan for Federal Universal Service Program." Florida PSC Order No. PSC-97-1262-FOF-TP issued October 14, 1997, a copy of which is attached to these comments. Although each eligible telecommunications carrier will be required to provide state support of \$3.50 per Lifeline customer under the order, the Florida Public Service Commission decided that "due to the uncertainty regarding whether Florida's Lifeline Assistance Plan will meet federal requirements for state matching, Florida should not pursue the additional \$1.75 in federal funding at this time." Florida PSC Order No. PSC-97-1262-FOF-TP at page 10. On October 30, 1997, the Citizens of Florida filed a petition for a hearing on that finding. A copy of that petition is attached to these comments. The petition by the Citizens of Florida has the effect of voiding the Florida Public Service Commission's finding pending a hearing.


11. The Citizens of Florida believe that the Commission's Report and Order did not intend to disqualify existing state Lifeline programs from federal matching funding. Indeed, it appears to us that the Commission went out of its way to state that it would not prescribe the methods states must use to generate intrastate Lifeline support. The Citizens of Florida urge the Commission to find that Florida's Lifeline



Assistance Program does indeed qualify for federal matching funds. This finding would allow Florida's Lifeline customers to receive the full support intended by the Commission and help bring about the increase in subscriber ship the Commission intended.

Respectfully submitted,

Jack Shreve  
Public Counsel  
Fla. Bar No. 73622

A handwritten signature in black ink, appearing to read "Charles J. Beck". The signature is fluid and cursive, with the first name "Charles" and last name "Beck" clearly distinguishable.

Charles J. Beck  
Deputy Public Counsel  
Fla. Bar No. 217281  
Office of Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street  
Room 812  
Tallahassee, FL 32399-1400  
(904) 488-9330

Attorneys for the Citizens  
of the State of Florida

CERTIFICATE OF SERVICE  
CC Docket No. 96-45

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S.

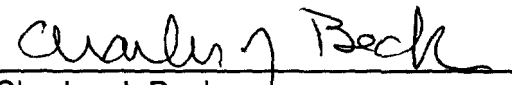
Mail or hand-delivery to the following persons on this 30th day of October, 1997.

Office of the Secretary  
1919 M Street, NW  
Room 222  
Washington, DC 20554

Cheryl Todd  
Federal Communications Commission  
Universal Service Branch  
2100 M Street, NW  
Washington, DC 20554

Lori Wright  
Federal Communications Commission  
Universal Service Branch  
2100 M Street, NW  
Washington, DC 20554

Cynthia Miller  
Senior Attorney  
Division of Appeals  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

  
Charles J. Beck

comment.fcc

## **Excerpt from Chapter 364, Florida Statutes**

### ***364.01 Powers of commission, legislative intent.—***

(1) The Florida Public Service Commission shall exercise over and in relation to telecommunications companies the powers conferred by this chapter.

(2) It is the legislative intent to give exclusive jurisdiction in all matters set forth in this chapter to the Florida Public Service Commission in regulating telecommunications companies, and such preemption shall supersede any local or special act or municipal charter where any conflict of authority may exist. However, the provisions of this chapter shall not affect the authority and powers granted in s. 166.231(9) or s. 337.401.

(3) The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure. The Legislature further finds that the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition, but nothing in this chapter shall limit the availability to any party of any remedy under state or federal antitrust laws. The Legislature further finds that changes in regulations allowing increased competition in telecommunications services could provide the occasion for increases in the telecommunications workforce; therefore, it is in the public interest that competition in telecommunications services lead to a situation that enhances the high-technological skills and the economic status of the telecommunications workforce.

(4) The commission shall exercise its exclusive jurisdiction in order to:

(a) Protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices.

(b) Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.

(c) Protect the public health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation.

(d) Promote competition by encouraging new entrants into telecommunications markets and by allowing a transitional period in which new entrants are subject to a lesser level of regulatory oversight than local exchange telecommunications companies.

(e) Encourage all providers of telecommunications services to introduce new or

experimental telecommunications services free of unnecessary regulatory restraints.

(f) Eliminate any rules and/or regulations which will delay or impair the transition to competition.

(g) Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.

(h) Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, if doing so does not reduce the availability of adequate basic local telecommunications service to all citizens of the state at reasonable and affordable prices, if competitive telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis.

(i) Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.

#### *364.025 Universal service.*

(1) For the purposes of this section, the term "universal service" means an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas. It is the intent of the Legislature that universal service objectives be maintained after the local exchange market is opened to competitively provided services. It is also the intent of the Legislature that during this transition period the ubiquitous nature of the local exchange telecommunications companies be used to satisfy these objectives. For a period of 4 years after January 1, 1996, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory.

(2) The Legislature finds that each telecommunications company should contribute its fair share to the support of the universal service objectives and carrier-of-last-resort obligations. For a transitional period not to exceed January 1, 2000, an interim mechanism for maintaining universal service objectives and funding carrier-of-last-resort obligations shall be established by the commission, pending the implementation of a permanent mechanism. The interim mechanism shall be implemented by no later than January 1, 1996, and shall be applied in a manner that ensures that each alternative local exchange telecommunications company contributes its fair share to the support of universal service and carrier-of-last-resort obligations. The interim mechanism applied to each alternative local exchange telecommunications company shall reflect a fair share of the local exchange telecommunications company's

recovery of investments made in fulfilling its carrier-of-last-resort obligations, and the maintenance of universal service objectives. The commission shall ensure that the interim mechanism does not impede the development of residential consumer choice or create an unreasonable barrier to competition. In reaching its determination, the commission shall not inquire into or consider any factor that is inconsistent with s. 364.051(c). The costs and expenses of any government program or project required in part II of this chapter shall not be recovered under this section.

(3) In the event any party, prior to January 1, 2000, believes that circumstances have changed substantially to warrant a change in the interim mechanism, that party may petition the commission for a change, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances, including that the provider's customer population includes as many residential as business customers. The commission shall act on any such petition within 120 days.

(4) Prior to the expiration of this 4-year period, the Legislature shall establish a permanent universal service mechanism upon the effective date of which any interim recovery mechanism for universal service objectives or carrier-of-last-resort obligations imposed on alternative local exchange telecommunications companies shall terminate. The commission is directed to research the issue of a universal service and carrier-of-last-resort mechanism and recommend to the Legislature what the commission determines to be a reasonable and fair mechanism for providing to the greatest number of customers basic local exchange telecommunications service at an affordable price. The recommendation shall be provided to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives no later than January 1, 1997. The recommendation shall address, at minimum, the following:

(a) Whether a subsidy or some other mechanism is necessary.

(b) If a subsidy is necessary, the minimum amount needed and a mechanism to collect the required amount.

(c) If a subsidy is necessary, a mechanism to distribute the subsidy funds.

(d) If a subsidy is necessary, from which providers of telecommunications services the subsidy should be collected.

(e) Whether the deaveraging of basic local exchange telecommunications service rates should be required to more appropriately reflect the cost of providing service.

(f) Whether targeted subsidies are more appropriate than average basic local exchange telecommunications service pricing for maintaining universal service objectives.

(5) After January 1, 2000, an alternative local exchange telecommunications company may petition the commission to become the universal service provider and carrier of last resort in areas requested to be served by that alternative local exchange telecommunications company. Upon petition of an alternative local exchange

telecommunications company, the commission shall have 120 days to vote on granting in whole or in part or denying the petition of the alternative local exchange company. The commission may establish the alternative local exchange telecommunications company as the universal service provider and carrier of last resort, provided that the commission first determines that the alternative local exchange telecommunications company will provide high-quality, reliable service. In the order establishing the alternative local exchange telecommunications company as the universal service provider and carrier of last resort, the commission shall set the period of time in which such company must meet those objectives and obligations and shall set up any mechanism needed to aid such company in carrying out these duties.

(6) By October 1, 1996, the Office of the Public Counsel shall submit a report to the commission on whether the interim mechanism should continue to serve as a means for assisting in the funding of universal service objectives and carrier-of-last-resort obligations or if a different mechanism is needed.

#### *364.051 Price regulation.—*

(1) **SCHEDULE.**—Notwithstanding any other provisions of this chapter, the following local exchange telecommunications companies shall become subject to the price regulation described in this section on the following dates:

(a) For a local exchange telecommunications company with 100,000 or more access lines in service as of July 1, 1995, such company may file with the commission a notice of election to be under price regulation effective January 1, 1996, or when an alternative local exchange telecommunications company is certificated to provide local exchange telecommunications services in its service territory, whichever is later.

(b) Effective on the date of filing its election with the commission, but no sooner than January 1, 1996, any local exchange telecommunications company with fewer than 100,000 access lines in service on July 1, 1995, that elects pursuant to s. 364.052 to become subject to this section.

(c) Each company subject to this section shall be exempt from rate base, rate of return regulation and the requirements of ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18.

(2) **BASIC LOCAL TELECOMMUNICATIONS SERVICE.**—Price regulation of basic local telecommunications service shall consist of the following:

(a) Effective January 1, 1996, the rates for basic local telecommunications service of each company subject to this section shall be capped at the rates in effect on July 1, 1995, and such rates shall not be increased prior to January 1, 1999. However, the basic local telecommunications service rates of a local exchange telecommunications company with more than 3 million basic local telecommunications service access lines in service on July 1, 1995, shall not be increased prior to January 1, 2001.

(b) Upon the date of filing its election with the commission, the rates for basic local telecommunications service of a company that elects to become subject to this section shall be capped at the rates in effect on that date and shall remain capped as stated in paragraph (a).

(c) There shall be a flat-rate pricing option for basic local telecommunications services, and mandatory measured service for basic local telecommunications services shall not be imposed.

(3)(a) By December 1, 1997, the commission shall report and recommend on an exchange by exchange basis to the Legislature as to whether there is a need to extend the caps provided for in paragraphs (2)(a) and (b) for basic local telecommunications service prices, or whether there is some other means, excluding rate of return regulation, to ensure reasonable and affordable rates for basic local telecommunications service.

(b) In making the determination as to whether price caps are needed to ensure reasonable and affordable rates for basic local telecommunications service provided by a local exchange telecommunications company with less than 3 million basic local telecommunications service access lines in service on July 1, 1995, the commission shall consider whether the level of competition in the area justifies the elimination of price caps.

(c) The Legislature shall review the commission's report submitted pursuant to paragraph (3)(a) and determine whether there is a continuing need for basic local telecommunications service prices to remain capped. Unless the Legislature acts to the contrary, the caps shall remain in place in any exchange in which the Legislature determines that the level of competition does not justify the elimination of price caps for an additional 2 years or until the commission during that 2-year period determines that the level of competition in the exchange justifies the elimination of price caps.

(4) In the event that it is determined that the level of competition justifies the elimination of price caps in an exchange served by a local exchange telecommunications company with less than 3 million basic local telecommunications service access lines in service, or at the end of 5 years for any local exchange telecommunications company, the local exchange telecommunications company may thereafter on 30 days' notice adjust its basic service prices once in any 12-month period in an amount not to exceed the change in inflation less 1 percent. Inflation shall be measured by the changes in the Gross Domestic Product Fixed 1987 Weights Price Index, or successor fixed weight price index, published in the Survey of Current Business or a publication, by the United States Department of Commerce. In the event any local exchange telecommunications company, after January 1, 2001, believes that the level of competition justifies the elimination of any form of price regulation the company may petition the Legislature.

(5) Notwithstanding the provisions of subsection (2), any local exchange telecommunications company that believes circumstances have changed substantially

to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances. The costs and expenses of any government program or project required in part II shall not be recovered under this subsection unless such costs and expenses are incurred in the absence of a bid and subject to carrier-of-last-resort obligations as provided for in part II. The commission shall act upon any such petition within 120 days of its filing.

**(6) NONBASIC SERVICES.**—Price regulation of nonbasic services shall consist of the following:

(a) Each company subject to this section shall maintain tariffs with the commission containing the terms, conditions, and rates for each of its nonbasic services, and may set or change, on 15 days' notice, the rate for each of its nonbasic services, except that a price increase for any nonbasic service category shall not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area at which time the price for any nonbasic service category may be increased in an amount not to exceed 20 percent within a 12-month period, and the rate shall be presumptively valid. However, for purposes of this subsection, the prices of:

1. A voice-grade, flat-rate, multi-line business local exchange service, including multiple individual lines, centrex lines, private branch exchange trunks, and any associated hunting services, that provides dial tone and local usage necessary to place a call within a local exchange calling area; and

2. Telecommunications services provided under contract service arrangements to the SUNCOM Network, as defined in chapter 282,

shall be capped at the rates in effect on July 1, 1995, and such rates shall not be increased prior to January 1, 1999; provided, however, that a petition to increase such rates may be filed pursuant to subsection (5) utilizing the standards set forth therein. There shall be a flat-rate pricing option for multi-line business local exchange service, and mandatory measured service for multi-line business local exchange service shall not be imposed. Nothing contained in this section shall prevent the local exchange telecommunications company from meeting offerings by any competitive provider of the same, or functionally equivalent, nonbasic services in a specific geographic market or to a specific customer by deaveraging the price of any nonbasic service, packaging nonbasic services together or with basic services, using volume discounts and term discounts, and offering individual contracts. However, the local exchange telecommunications company shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers.

(b) The commission shall have continuing regulatory oversight of nonbasic services for purposes of ensuring resolution of service complaints, preventing cross-subsidization of nonbasic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market. The cost standard for determining



cross-subsidization is whether the total revenue from a nonbasic service is less than the total long-run incremental cost of the service. Total long-run incremental cost means service-specific volume and nonvolume-sensitive costs.

(c) The price charged to a consumer for a nonbasic service shall cover the direct costs of providing the service and shall, to the extent a cost is not included in the direct cost, include as an imputed cost the price charged by the company to competitors for any monopoly component used by a competitor in the provision of its same or functionally equivalent service.

*364.052 Regulatory methods for small local exchange telecommunications companies.—*

(1) For purposes of this section, a small local exchange telecommunications company is a local exchange telecommunications company certificated by the commission prior to July 1, 1995, which has fewer than 100,000 access lines in service on that date.

(2) A small local exchange telecommunications company shall remain under rate base, rate of return regulation until the company elects to become subject to s. 364.051, or January 1, 2001, whichever occurs first. After July 1, 1996, a company subject to this section, electing to be regulated pursuant to s. 364.051, will have any overearnings attributable to a period prior to the date on which the company makes the election subject to refund or other disposition by the commission. Small local exchange telecommunications companies not electing the price regulation provided for under s. 364.051 shall also be regulated pursuant to ss. 364.03, 364.035(1) and (2), 364.05, and 364.055 and other provisions necessary for rate base, rate of return regulation. If a small local exchange telecommunications company has not elected to be regulated under s. 364.051, by January 1, 2001, the company shall remain under rate base, rate of return regulation until such time as a certificated alternative local exchange company provides basic local telecommunications service in the company's territory. At such time, the small local exchange telecommunications company shall be subject to s. 364.051.

(a) By July 1, 1996, the commission shall establish, by rule, ranges of basic factors for lives and salvage values to be used in developing depreciation rates for companies subject to this section. Companies shall have the option of using basic factors within the established ranges or of filing depreciation studies.

(b) By January 1, 1996, the commission shall adopt, by rule, streamlined procedures for regulating companies subject to this section. These procedures shall minimize the burdens of regulation with regard to audits, investigations, service standards, cost studies, reports, and other matters, and the commission shall establish, by rule, only those procedures that are cost-justified and are in the public interest so that universal service may be promoted. Upon petition filed in this rulemaking proceeding, the commission shall review and may approve any regulations unique to the specific

circumstances of a company subject to this section.

(3) A company subject to this section may at any time after January 1, 1996, elect to be regulated pursuant to s. 364.051. If such a company so elects or provides cable television programming services directly or as video dial tone applications authorized under 47 U.S.C. s. 214, except as provided for in compliance with part II of this chapter, a certificated alternative local exchange company may provide local exchange telecommunications services within the territory of the electing company.

(4) Any alternative local exchange telecommunications company competing within the territory of any small local exchange telecommunications company must do so on an exchange-wide basis for the provision of flat-rated, switched residential and business local exchange telecommunications services in all exchanges in which they elect to serve, unless the commission determines otherwise. The alternative local exchange telecommunications company may petition and the commission has the authority to determine that it is in the public interest for an alternative local exchange telecommunications company to service a geographic territory that is less than an entire exchange.

(5) Any company subject to this section shall continue to function as the universal service provider and carrier of last resort in the territory in which such company was certificated to provide service on July 1, 1995; provided, however, that after January 1, 2001, such company shall only be required to act as the universal service provider and carrier of last resort if the commission finds that it is economically feasible for such company to remain the universal service provider and carrier of last resort. If the commission finds that it is not economically feasible for a small local exchange telecommunications company to remain the carrier of last resort, the commission shall establish a funding mechanism to permit such company to fulfill its obligations as the carrier of last resort.

(6) Notwithstanding any other provisions of this act, no local exchange telecommunications company subject to this section will be required to resell any tariffed, flat-rated, switched residential or business services while the price caps for either basic local telecommunications services or nonbasic services remain in place.

*364.10 Undue advantage to person or locality prohibited; exception.—*

(1) A telecommunications company may not make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(2) The prohibitions of subsection (1) notwithstanding, a telecommunications company serving as carrier of last resort shall provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in a commission-approved tariff and a preferential rate to eligible facilities as provided for in part II.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Establishment of  
eligible telecommunications  
carriers pursuant to Section  
214(e) of the Telecommunications  
Act of 1996.

DOCKET NO. 970644-TP

In re: Implementation of  
changes in the Federal Lifeline  
Assistance Plan currently  
provided by telecommunications  
carriers of last resort.

DOCKET NO. 970744-TP  
ORDER NO. PSC-97-1262-FOF-TP  
ISSUED: October 14, 1997

The following Commissioners participated in the disposition of  
this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
DIANE K. KIESLING  
JOE GARCIA

NOTICE OF PROPOSED AGENCY ACTION ORDER  
DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIERS  
AND APPROVING CHANGES TO LIFELINE ASSISTANCE PLAN  
FOR FEDERAL UNIVERSAL SERVICE PROGRAM

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service  
Commission that the action discussed herein is preliminary in  
nature and will become final unless a person whose interests are  
substantially affected files a petition for a formal proceeding,  
pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

The Telecommunications Act of 1996 (the Act) initiated  
sweeping changes in the telecommunications industry. Among those  
changes was the introduction of Eligible Telecommunications

ORDER NO. PSC-97-1262-FOF-TP  
DOCKETS NOS. 970644-TP, 970744-TP  
PAGE 2

Carriers (ETCs) and a new federal universal service program. ETCs are defined in 47 U.S.C. §214(e):

(1) A common carrier designated as an eligible telecommunications carrier . . . shall be eligible to receive universal support . . . and shall, throughout the service area for which the designation is received-

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

The Act provides that state commissions may designate ETCs either on their own motion or upon request.

The FCC determined in its Report and Order on Universal Service, CC Docket No. 96-45, FCC Order No. 97-157, released May 8, 1997 (FCC Order), that the supported services provided by all ETCs must include voice grade access to the public switched network, a certain amount of free local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service, access to emergency services, access to operator services, access to interexchange service, and access to directory assistance. In addition, ETCs must provide Lifeline and Link Up to eligible subscribers. As part of their Lifeline plans, ETCs must offer voluntary toll limitation services in exchange for reduced or zero deposits.

The FCC Order institutes several changes in the existing Lifeline program. Many of the changes were adopted to make the program consistent with the Act, particularly with regard to the competitive neutrality requirement. The current program is a function of jurisdictional separations and applies only to incumbent LECs; thus, it is not competitively neutral as required by the Act. Other changes were instituted in an attempt to increase subscribership levels among low-income consumers.

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Beginning January 1, 1998, a baseline federal support amount of \$3.50 will be available in all states, the District of Columbia, and all territories and possessions, regardless of whether any intrastate support is provided. The baseline amount of federal support will increase from the current \$3.50 waiver of the Subscriber Line charge (SLC) to \$5.25, provided the state approves the additional support to be passed through in intrastate rates. The federal jurisdiction will also provide additional Lifeline support equal to one-half of any intrastate support, up to an additional \$1.75. A total of \$7.00 in federal universal support can be received for each Lifeline subscriber.

## II. DESIGNATION OF ETCs

Only ETCs designated by state commissions pursuant to the criteria in the Act will be eligible to receive high cost and low income support. At present, the local exchange companies (LECs) serve in a similar role as carriers of last resort. Florida LECs can receive federal universal service support either through the current high cost fund or through Lifeline and Link Up.

The supported services, with the exception of certain toll limitation services, are already provided by LECs. Additionally, the provision of Lifeline is already required by Section 364.10, Florida Statutes. Since the LECs are largely meeting the requirements of the new federal rules, we believe it is appropriate to allow them to continue to receive federal universal service support.

Under the Act and the FCC Order, state commissions must also establish service areas for ETCs. A service area has been defined by the FCC as "a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." See 47 C.F.R. §54.207. LECs already have a certificated service area. That area should serve for purposes of federal universal service funding. Alternative Local Exchange Companies (ALECs), however, are certificated state-wide, although they may actually serve much smaller areas. We believe it would be appropriate to determine an ALEC's service area for purposes of federal universal service support at the time it may apply to be an ETC.

In the case of a rural LEC, the Act defines the service area as the study area that is used for jurisdictional separations. An

ETC in the service area of a rural LEC must serve the entire study area, unless a different area is approved by both the state Commission and the FCC. Additionally, the Act requires:

[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. §214(2)

It should be noted that under Florida law, ALECs may not offer basic local telecommunications services within the territory served by a small LEC before January 1, 2001, unless the price LEC has elected price regulation. However, mobile carriers may serve those areas, and may apply for ETC status.

We believe that the requirements of the 1996 Act can be met initially by designating the incumbent LECs as ETCs. Upon consideration, we hereby designate the incumbent LECS (ILECs) as ETCs. LECs should continue to serve their current certificated service areas. All other carriers (non-ILECs) who wish to receive ETC status in the service area of a non-rural LEC should file a petition with the Commission for ETC status and should propose what they believe is an appropriate service area. Any carriers that wish to be designated as an ETC in the service area of a rural LEC must show why it is in the public interest to have more than one ETC in that service area. Further, if approved, such carriers must serve the entire service area of the rural LEC to be considered an ETC or make a showing as to why some other lesser area would better serve the public interest.

### III. ETC ADVERTISEMENT OF SERVICES

One of the requirements for receipt of federal universal service funding under the Act is the advertisement of supported services in a media of general distribution. Presently, LECs work with various local welfare agencies who include Lifeline information in their client packages. Although this appears to be the most effective means of reaching eligible subscribers, we have no authority to mandate the participation of the local welfare agencies. However, we can require the ETCs to work with those agencies to the extent it is possible to do so. Although LECs provided a bill stuffer regarding Lifeline when it was first offered, no ongoing advertising is required. We note that at least

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one company, Sprint, includes Lifeline information in its telephone directory.

We have analyzed the growth in Lifeline customers to evaluate the effectiveness of the current advertising methods. Florida's Lifeline statute became effective on July 1, 1995, for all companies other than BellSouth. By June 30, 1996, there were 120,499 Lifeline subscribers. Five companies reported no participants. By June 30, 1997, there were 155,302 Lifeline subscribers, with only one company, Vista-United, reporting no participants. Of a total 34,803 increase in Lifeline subscribers over a period of one year, 29,076 were added in the first six months of 1997. Based on this data, it appears that the growth in Lifeline subscribership is accelerating.

While Lifeline subscribership is increasing in Florida, Florida's participation level is still substantially below the national average of approximately five percent. Notably, small Florida LECs in rural areas have some of the lowest participation levels in the state. It is clear that more work needs to be done to increase Lifeline subscribership in Florida.

The advertising requirement imposed upon ETCs by the Act extends to all supported services, not just Lifeline. However, we believe that, until there is meaningful competition, requiring the LECs to advertise more than Lifeline and Link Up would serve no purpose. Customers already know that they can obtain service from the "phone company," as demonstrated by the high rate of growth in access lines in this state. What they do not know is what other companies can provide comparable service. Accordingly, we believe it would be appropriate to establish additional advertising requirements for supported services at such time as non-LEC companies apply to become ETCs.

Upon consideration, we hereby require that, on an interim basis, ETCs shall provide Lifeline and Link Up information in their telephone directories at the next possible publication date. This information shall include information on voluntary toll limitation services and the availability of reduced deposits. If the directory contains an index, Lifeline and Linkup shall be listed in the index. We recognize that directories have staggered closing dates and publication dates. Therefore, ETCs shall advertise this information in the next possible publication of their directories following the issuance of this Order.



ETCs shall also provide a bill stuffer advertising the availability of these services on an annual basis. Further, we require ETCs to work with local welfare agencies, to the extent it is possible, to reach eligible subscribers. At such time as non-LECs apply to become ETCs, we shall establish additional advertising requirements for all supported services that will apply to both LECs and non-LECs.

IV. ETC DISCONNECTION OF LIFELINE CUSTOMERS' SERVICE  
FOR NON-PAYMENT OF TOLL CHARGES

Under the FCC Order, an ETC may not disconnect a Lifeline customer's local telephone service for failure to pay toll charges. An ETC may disconnect long distance (toll) service for failure to pay toll charges. One new requirement for Lifeline is that ETCs must provide Lifeline consumers with toll limitation services at no charge. This requirement is premised on the belief that one of the primary reasons subscribers lose access to telecommunications services is disconnection for failure to pay toll bills.

With voluntary toll blocking, customers may have all toll calls blocked. With toll control services, customers may limit in advance the toll usage per billing cycle. The prohibition against disconnection, however, is not conditioned upon the acceptance of toll limitation services. Rather, a customer's deposit can be eliminated in exchange for participation in toll blocking. ETCs may not collect service deposits from customers who select toll blocking. ETCs should reduce the service deposit appropriately for those customers who selected toll control.

The FCC limited the disconnection prohibition to Lifeline subscribers because it believes only low-income consumers experience dramatically lower subscribership levels that can be attributed to toll charges. The FCC also stated that if it subsequently finds that subscribership levels among non-Lifeline subscribers begin to decrease, it will consider whether this rule should apply to all consumers. At present, the FCC has left the matter of disconnection of non-Lifeline customers to the states' discretion.

We note that this is an exception to our long-standing policy regarding discontinuance of local service for non-payment of toll charges. If a LEC provides billing service for an interexchange company (IXC), it has disconnect authority for nonpayment of the IXC bill. See Docket No. 820537-TP, Order No. 12765, p. 26. We